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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,825	07/21/2003	Gudmundur G. Haraldsson	CONLINCO-08305	5723

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EXAMINER

EBRAHIM, NABILA G

ART UNIT	PAPER NUMBER
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1618

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/623,825

Applicant(s)

HARALDSSON ET AL.

Examiner

Nabila G. Ebrahim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date ____.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-3, 8, 9 rejected under 35 U.S.C. 102(b) as being anticipated by Cain (WO 9718320).

Cain teaches an acylglyceride mixture comprising at least one C18:2 fatty acid moiety selected from the group consisting of c9,t11 octadecadienoic acid (linolic acid), wherein said mixture has a c9,t11 octadecadienoic acid content of greater than 50%, see examples, especially example 6. the triglyceride mixtures would have the same formula as claimed, see abstract and example 6, which discloses that the c9,t11 octadecadienoic acid (linolic acid) triglyceride has a content of 77.9%. since the mixture also contains 22.1% of the 10, 12 isomer, this mixture would be inherently expected to have less than 2% of the 8, 10 and 11, 13 isomers, as claimed. The acylglyceride mixtures are prepared using enzymes e.g., lipases, (*C. rugosa* a.k.a. *C. cylindrosa*), as well as, a reaction temperature of 35°C, see page 4, and example 6. the methods of making the mixtures also include the use of solid phase lipases, see examples 8-10 and 14 (Duolite, and anionic resin). The acylglyceride mixtures are used in animal feeds in amounts, which encompass the claimed range, see page 7 and claims 11-13. Precursor

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materials thereof are disclosed on page 5, lines 4+ and include diglycerides, see page 5, line 35.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cain WO 97/18320 (Cain).

Cain teaches an acylglyceride mixture comprising at least one C18:2 fatty acid moiety selected from the group consisting of c9,t11 octadecadienoic acid (linolic acid), wherein said mixture has a c9,t11 octadecadienoic acid content of greater than 50% as set forth above. Cain further teaches that the L1/L2 ratio may be as high as 99 and as low as 2.3 (e.g. page 5), which would result in a very high amount of acylglyceride

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mixture comprising at least one c18:2 fatty acid moiety selected from the group consisting of c9,t11 octadecadienoic acid (linolic acid), having the "purity" as set forth in the claim, e.g., excluding the 8,10 and 11,13 isomers.

Cain fails to specifically disclose mixtures, which would encompass all of the specific amounts of isomers and lack thereof as encompassed by the instant claims.

It would have been obvious to one of ordinary skill in the art to form acyglyceride mixtures comprising various amounts of at least one c18:2 fatty acid moiety selected from the group consisting of c9, t11 octadecadienoic acid (linolic acid) because t10, x12 octadecadienoic acid isomers because Cain teaches that the L1/L2, which corresponds to such isomers, may will encompass these amounts of isomers, without additional isomers contained therein. Generally, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 105 USPQ 233, 235 (CCPA1955). Further, the purification of an old product in a mere change of degree in its properties is not patentable. *In re Windhaus*, (Poba 1931) 15 USPQ 45.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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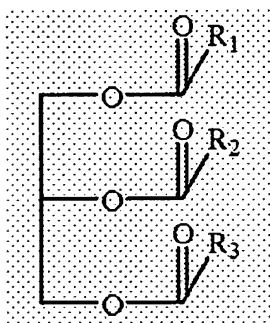
from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim1, 2, 5, 6, 8-11 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 5-12 of U.S. Patent No. 6,225,486. Although the conflicting claims are not identical, they are not patentably distinct from each other because '486 recites:

- An acylglycerol composition comprising a plurality of acylglycerol molecule comprising a plurality of acylglycerol molecules of the structure.



where R, R, and R are selected from groups consisting of a hydroxyl group and an octadecadienoic acid.

- The composition is comprising food product for human -or feed for animal- consumption incorporating t10, c12 octadecadienoic acid.

It is obvious that the claims of '486 and instant application' claims are similar and overlapping.

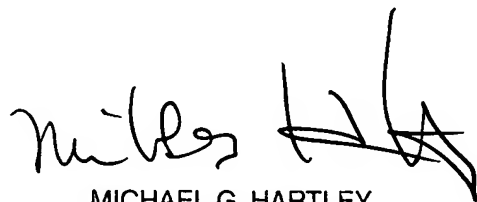
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nabila G. Ebrahim whose telephone number is 571-272-8151. The examiner can normally be reached on 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nabila Ebrahim

5/19/06



MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER